

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 728

Docket No. MC2022-19

Competitive Product Prices
Priority Mail Contract 728 (MC2022-19)
Negotiated Service Agreement

Docket No. CP2022-21

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL CONTRACT 728
TO THE COMPETITIVE PRODUCT LIST

(November 18, 2021)

The Public Representative hereby provides comments pursuant to the Commission notice initiating this docket.¹ In that notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 728 (Contract) to the competitive product list.²

The Postal Service's Request includes a public (redacted) version of the Governor's Decision, a public (redacted) version of the Contract, proposed changes to the Mail Classification Schedule product list, a statement of supporting justification, and a certification of compliance with 39 U.S.C. § 3633(a). The Postal Service also filed under seal the unredacted version of the Governor's Decision and the Contract, and supporting financial data estimating the contract value during the first year.

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, November 10, 2021.

² USPS Request to Add Priority Mail Contract 728 to Competitive Product List and Notice of Filing Materials Under Seal, November 9, 2021. (Request)

According to the Postal Service, the Contract is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service maintains that the prices and classification underlying the Contract are supported by Governors’ Decision No. 19-1.³

The Contract’s effective date will be set 3 business days after receiving final regulatory approval by the Commission. Attachment B at 7. However, if the Contract’s effective date occurs between December 1st and March 31st, the Contract will expire on March 31st during the third year. *Id.* The Contract is to expire 3 years from the effective date or March 31st during the third year, unless (1) terminated by either party with 30 days’ notice to the other Party in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent contract between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation. *Id.*

COMMENTS

The Public Representative has reviewed the Postal Service’s Request, the Contract, supporting attachments, and the financial model filed under seal. Based upon that review, the Public Representative concludes that the Contract should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the Contract will generate sufficient revenues to cover costs in the first year and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that the Contract be added to the competitive product list. 39 U.S.C. § 3642(b)(1) requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.”

³ Decision of the Governors of the United States Postal Service on the Establishment Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, February 7, 2019 (Governors’ Decision No. 19-1).

Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 39 U.S.C. § 3642(b)(1). Attachment D. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add the Contract to the competitive product is appropriate.

Sufficient Revenue Requirement. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

Based upon a review of the financial data, the negotiated prices for the Contract should generate sufficient revenues to cover costs during the first year of the Contract and therefore meet the requirements of 39 U.S.C. § 3633(a). The Contract is expected to remain in effect for a period of 3 years. During this 3 year period, the Contract contains a mechanism for annual upward adjustment of prices. Finally, the Postal Service must file revenue and cost data for the Contract for review in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for the Contract for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

Gregory Stanton
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6864
gregory.stanton@prc.gov